

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

RONALD D. SMITH,)
ID # 1969543,)
Petitioner,)
vs.) **No. 3:17-CV-0138-D**
)
LORIE DAVIS, Director,)
Texas Department of Criminal)
Justice, Correctional Institutions Division,)
Respondent.)

ORDER

After making an independent review of the pleadings, files, and records in this case, and the findings, conclusions, and recommendation of the magistrate judge, the court concludes that the findings and conclusions are correct. It is therefore ordered that the findings, conclusions, and recommendation of the magistrate judge are adopted.

For the reasons stated in the findings, conclusions, and recommendation of the United States Magistrate Judge, the petition for habeas corpus is successive regarding the burglary conviction and is transferred to the United States Court of Appeals for the Fifth Circuit pursuant to *Henderson v. Haro*, 282 F.3d 862, 864 (5th Cir. 2002), and *In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997), by separate judgment.

For the reasons stated in the findings, conclusions, and recommendation of the United States Magistrate Judge, the petition for habeas corpus regarding the child pornography convictions is dismissed for lack of subject matter jurisdiction.

In accordance with Fed. R. App. P. 22(b) and 28 U.S.C. § 2253(c), and after considering the record in this case and the recommendation of the magistrate judge, the court denies a certificate of appealability regarding the dismissal of the petition for lack of subject matter jurisdiction over the

challenge to the child pornography convictions. The court adopts and incorporates by reference the magistrate judge's findings, conclusions, and recommendation in support of its finding that petitioner has failed to show (1) that reasonable jurists would find this court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

If petitioner files a notice of appeal regarding the dismissal of the petition for lack of subject matter jurisdiction over the challenge to the child pornography convictions, he must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis* and a properly signed certificate of inmate trust account.

SIGNED December 27, 2017.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE